



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 18 2012

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Gary Kramer, President
Badger State Ethanol LLC
820 West 17th Street
Monroe, Wisconsin 53566

Re: Notice of Violation and Finding of Violation
Badger State Ethanol, LLC
Monroe, Wisconsin

Dear Mr. Kramer:

The U.S. Environmental Protection Agency is issuing the enclosed Notice of Violation and Finding of Violation (NOV/FOV) to Badger State Ethanol, LLC (you) under Sections 110, 111 and 113(a) of the Clean Air Act (the Act), 42 U.S.C. §§ 7410, 7411(e), and 7413(a), respectively. We find that you have violated the Act and the Wisconsin State Implementation Plan at your Monroe, Wisconsin facility.

Section 113 of the Act gives us several enforcement options. These options include issuing an Administrative Compliance Order, issuing an Administrative Penalty Order and bringing a judicial civil or criminal action.

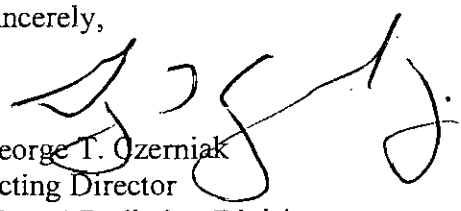
We are offering you an opportunity to confer with us about the violations alleged in the NOV/FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply and the steps you will take to prevent future violations.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Manoj P. Patel. You may call him at 312.353.3565 to request a conference. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,

3102 8 1 932



George T. Ozerniak
Acting Director
Air and Radiation Division

Enclosure

cc: Tom Roushar, Supervisor
South Central Region

Bill Baumann, Section Chief, Compliance and Enforcement
Wisconsin Department of Natural Resources

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

Badger State Ethanol, LLC
Monroe, Wisconsin

Proceedings Pursuant to
Section 113(a)(1) of the
Clean Air Act, 42 U.S.C.
§ 7413(a)(1)

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) **NOTICE OF VIOLATION**
) **FINDING OF VIOLATION**
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) **EPA-5-12-WI-10**
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NOTICE AND FINDING OF VIOLATION

The U.S. Environmental Protection Agency (EPA) is issuing this Notice and Finding of Violation under Sections 110, 111(e), and 113(a)(1) of the Clean Air Act (the Act), 42 U.S.C. §§ 7410, 7411 and 7413(a)(1), respectively. EPA finds that Badger State Ethanol, LLC (Badger) has violated the Act and the Wisconsin State Implementation Plan (SIP), as follows:

Statutory and Regulatory Background

Standards of Performance for Industrial Commercial Institutional Steam Generating Units

1. Section 111(e) of the Act, 42 U.S.C. § 7411(e), provides that after the effective date of a standard of performance promulgated under Section 111, it is unlawful for any owner or operator of any new source to operate such source in violation of the standard.
2. Section 111(a)(2) of the Act, 42 U.S.C. § 7411(a)(2), defines the term “new source” as any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under Section 111 which will be applicable to such source.
3. 40 C.F.R. § 60.7 requires, in pertinent part, that any owner or operator subject to the provisions of Part 60 of the new source performance standards (NSPS) provide written notification of the date of construction, the date of start up, the date of any physical or operational change to a NSPS affected facility, and the start up date of any continuous monitoring systems.
4. On December 16, 1987, 52 Fed. Reg. 47842, EPA promulgated 40 C.F.R. Part 60 Subpart Db – Standards of Performance for Industrial Commercial Steam Generating Units at 40 C.F.R. §§ 60.40b – 60.49b.
5. 40 C.F.R. § 60.40b(a) states that the affected facility to which Subpart Db applies is each steam generating unit that commences construction, modification, or reconstruction after June 19, 1984, and that has a heat input capacity from fuels combusted in the steam generating unit of greater than 29 MW (100 million Btu/hour).

6. 40 C.F.R. § 60.41b defines “steam generating unit” to mean a device that combusts any fuel or byproduct/waste to produce steam or heat water or any other heat transfer medium.
7. 40 C.F.R. § 60.41b defines “natural gas” to mean (1) a naturally occurring mixture of hydrocarbon gases found in geological formations beneath the earth’s surface, of which the principal constituent is methane; or (2) liquefied petroleum gas, as defined by the American Society for Testing and Materials in ASTM D1835 (incorporated by reference).
8. 40 C.F.R. § 60.44b(a) provides that no owner or operator of a Subpart Db affected facility that combusts a natural gas with low heat release rate from a steam generating unit shall cause to be discharged into the atmosphere from that affected facility any gases that contain nitrogen oxides (NO_x) (expressed as NO₂) in excess of 43 ng/J (0.10 lb/million Btu) heat input.
9. 40 C.F.R. § 60.48b(b)(1) requires the owner or operator of a Subpart Db affected facility to install, calibrate, maintain, and operate a continuous emission monitoring system (CEMS) for measuring NO_x to the atmosphere, and record the output of the system.
10. 40 C.F.R. § 60.49b requires the owner or operator of a Subpart Db affected facility to maintain certain records and make certain reports to EPA.

Federally Enforceable State Operating Permit (FESOP) Program:

11. On June 28, 1989, 54 Fed. Reg. 27274, EPA issued guidance on FESOP to establish federally enforceable limits.
12. On January 14, 1994, Wisconsin Department of Natural Resources (WDNR) submitted the regulations, statutory changes, and administrative framework for the Operation Permits rule, Natural Resources (NR) 407, as a revision to its SIP.
13. On January 18, 1995, 60 Fed. Reg. 3538, at 40 C.F.R. § 52.2570 (c)(76), EPA approved Wisconsin Administrative Code Chapter NR 407 as part of the federally enforceable SIP for the State of Wisconsin.
14. Under NR 407.09(1)(f), a permittee must comply with all conditions of an operation permit.
15. Under NR 407.04(2), no permittee may continue operation of a source after the operation permit expires, unless the permittee submits a timely application for renewal of the permit. If permittee submits a timely application for renewal, the existing operation permit will not expire until the renewal application has been finally acted upon by WDNR.
16. Under NR 407.09(3), all terms and conditions in an operation permit, including any provisions designated to limit a stationary source’s potential to emit, are enforceable by the Administrator under Section 113(a) of the Act, 42 U.S.C. § 7413(a).

17. Under NR 407.09(1)(f)(1), any noncompliance with the operation permit constitutes a violation of the Wisconsin SIP and is grounds for enforcement action; permit suspension, revocation or revision; or, if applicable, under NR 144.3925(6), denial of a permit renewal application.
18. Section 113 of the Act, 42 U.S.C. § 7413, provides that whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of any applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding.

Facility Background

19. Badger owns and operates a fuel grade ethanol dry mill production facility at 820 West 17th Street, Monroe, Wisconsin (the Facility).
20. Badger is a "person" as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
21. The Facility includes two natural gas-fired dried distillers grains with soluble (DDGS) dryers (identified as Dryer A and Dryer B). Dryer A's emissions are controlled by a Regenerative Thermal Oxidizer followed by a Thermal Oxidizer followed by a Waste Heat Boiler. Dryer B's emissions are controlled by a Thermal Oxidizer followed by a Waste Heat Boiler. All emissions exhaust to stack S10.
22. The Facility has the potential to emit more than 100 tons per year of NO_x.
23. On January 5, 2005, the WDNR issued Air Pollution Control Operation Permit No. #123038080-F01 (FESOP) to Badger for the Facility. This FESOP expired on January 5, 2010. Badger applied for a renewal on June 24, 2009, and FESOP No. 123038080-F01 is active as WDNR has not acted upon the renewal permit application.
24. Part I.A.5. of the FESOP Permit No. # 123038080-F01 prohibits Process P10 from emitting NO_x in excess of 0.10 pound per million BTU heat input.
25. On October 27, 2011, Badger submitted a quarterly CEMS report for July 1 through September 30, 2011.

Violations

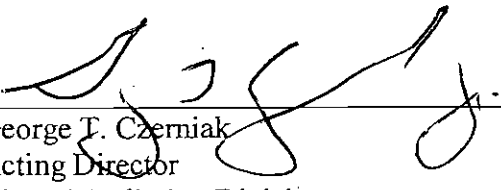
26. The 3rd quarter NO_x emissions report submitted to EPA, showed that NO_x emissions from Process P10 (Dryers A and B and the associated control equipment) were 0.113 lb per million BTU heat input based on the 30 day rolling averages from August 7 through September 8, 2011.
27. These excess NO_x emissions from the Process P10 constitute a violation of the NO_x emissions limit at 40 C.F.R. § 60.44b(a), Part I.A.5 of the FESOP Permit No. #123038080-F01 and the applicable Wisconsin SIP requirements specified in NR 407.

Environmental Impact of Violations

6. These violations have caused or can cause excess emissions of NO_x. Violation of NO_x standards increases the amount of acid rain and ground level ozone, which could cause respiratory inflammation.

Date

9/17/12


George T. Czerniak
Acting Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I sent a Notice and Finding of Violation, No. EPA-5-12-WI-10, by Certified Mail, Return Receipt Requested, to:

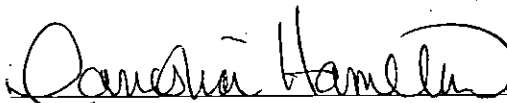
Gary Kramer, President
Badger State Ethanol LLC
820 West 17th Street
Monroe, Wisconsin 53566

I also certify that I sent copies of the Notice of Violation by first-class mail to:

Bill Baumann, Section Chief, Compliance
and Enforcement
Wisconsin Department of Natural Resource
Bureau of Air Management
101 S Webster Street
P.O. Box 7921 (AM/7)
Madison, Wisconsin 53702

Eileen Pierce, Region Leader
South Central Region
Wisconsin Department of Natural Resource
3911 Fish Hatchery Road
Madison, Wisconsin 53711

On the 20th day of September 2012.



Loretta Shaffer,
Administrative Assistant
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER:

7009 11080 0000 7669 7156